



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0262

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that officers engaged in an excessive show of force when they responded to a residential burglary call.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

An individual called 911 to report that a house under construction had been burglarized. In response to this call, Named Employee #1 (NE#1) and Named Employee #4 (NE#4) arrived at the scene of the incident, where they spoke with the 911 caller. The caller advised NE#1 and NE#4 that he worked as a demolition contractor at that location, which he monitors twice a week for signs of intrusion. According to the caller, when he arrived at the residence that morning, he saw that the back door had been pried open and plastic on the windows. The officers were given



permission to enter the residence, but they waited for another officer to arrive before entering. Once all three officers were on scene, they discussed how best to approach the building search. They then walked toward the residence with their firearms drawn – NE#1 and NE#4 with handguns and Named Employee #3 (NE#3) with a rifle.

The officers first approached the basement door, which the caller indicated was open. NE#1 knocked and announced that he was a police officer three times, but no response was heard. The officers then proceeded into the backyard of the residence, where NE#3 watched the back door while NE#1 and NE#4 inspected the yard and outbuildings. During this time, NE#3 told a neighbor [the Complainant]: “get back inside, get back inside. We’ve got guns out for a reason dude, get back inside.” NE#3 then knocked on the back door of the burglarized residence and announced that he was a police officer. The officers elected not to break the door down, whereupon they returned to the basement door, again announced that they were police officers, and entered the residence.

While inside the residence, a noise was heard from an upper floor, prompting the officers to exit the residence and call for additional backup. In response to this call, Named Employee #2 (NE#2) and Named Employee #5 (NE#5) arrived on scene. The officers then together entered the residence with their firearms drawn. While inside the residence, the officers repeatedly announced that they were police officers, and remarked that they heard someone moving about on an upper floor. After making their way upstairs, then encountered an unknown female and detained her before checking the residence for additional occupants. After the residence was cleared, the officers holstered their weapons. NE#3 returned to his patrol vehicle, unloaded his rifle, and stored the rifle inside.

Once the scene was under control, officers began speaking with the female who had been inside the residence. During this time, a bystander walked up to the officers and began speaking. NE#3 advised the individual that he could leave the scene and that he would “recommend doing so.” NE#3 continued by saying: “if you choose not to take that information, other things bad may happen, this is probably a good time for you to go.” The individual then shouted: “Yo, Skater Pete. I’ll see you when you get out.” NE#3 asked the individual if he was intimidating the witness that called 911. The individual responded that he was talking to someone inside the burglarized residence. Officers asked the individual several follow-up questions, after which the individual walked away from the scene.

Under SPD Policy: “An officer shall use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons.” (SPD Policy 8.200-POL-1). Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050). The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As a starting point, the drawing of a firearm, in and of itself, is not considered force under SPD policy. It only reaches the level of reportable force if the firearm is actually pointed at someone. Moreover, SPD trains its officers to draw their firearms when conducting a premise search of a potentially occupied burglary. They are trained to keep their firearms at the low ready but, if necessary, the training allows for the pointing of a firearm at a suspect within. Lastly, officers are expected to use team tactics when engaging in premise searches. This includes calling multiple other units to assist in the search. While this could be perceived as an excessive number of officers at one scene to someone unfamiliar with the training, the purpose of having more officers is to reduce the need for force to be used. Calling backing officers to assist is also a critical component of de-escalation.



Here, the officers responded to a call of a burglary of a vacant residence. They had consent to enter the residence and the lawful purpose to detain, and potentially arrest, anyone found therein. Moreover, to the extent someone had broken into and remained inside of the residence, the officers did not know whether that individual (or others) was armed. Given these circumstances and based on their training, it was reasonable for the officers to have their weapons ready and drawn as a precaution when they entered the residence. It was also necessary for protection and to be prepared if there was an armed threat inside. Lastly, the drawing of the firearms was proportional to the potential threat that could be posed by an armed suspect.

For these reasons, OPA finds the Named Employees conduct to have been consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as to all Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10). The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

NE#3 made two statements that were alleged to have been unprofessional. First, his direction to the Complainant to re-enter his residence. Second, his statements to the bystander and his advisement that the bystander should leave the scene and not threaten others. When considering the circumstances of this incident, OPA finds that neither statement violated policy.



With regard to the first statement, the officers were about to search a residence that was potentially the subject of an occupied burglary. They were concerned about the possibility that any suspect within the residence could be armed and they accordingly had their firearms drawn. When NE#3 told the Complainant to re-enter the residence, he did so to ensure that the Complainant remained safe. He did not appear to do so to be rude or to in any way undermine the Complainant's personal freedoms. While perhaps there was a different way that NE#3 could have phrased or presented this request, OPA does not believe that it was unprofessional. OPA also thinks that it would have been helpful had NE#3 tried to find the Complainant after the fact and to explain why he said what he said, but OPA again does not find that the failure to do so violated policy.

With regard to the second statement, it appeared that NE#3 was attempting to advise the bystander of the consequences of speaking with the detainee, as well as the consequences of yelling at a witness. The bystander was afforded time to explain his presence, then departed from the scene. Again, even if OPA believes that NE#3 could have taken a different approach, OPA does not believe that what he said or the decision to say it was unprofessional.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #4 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**